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9 *Attorneys for Defendants Gavin Newsom, in his*  
*official capacity as Governor of the State of*  
 10 *California, and individually; Gustavo Velasquez, in*  
*his official capacity as Director of the State of*  
 11 *California Department of Housing and Community*  
*Development, and individually; and the California*  
 12 *Department of Housing and Community*  
 13 *Development*

14  
 15 IN THE UNITED STATES DISTRICT COURT  
 16 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 17 SOUTHERN DIVISION

18 **CITY OF HUNTINGTON BEACH, a**  
 19 **California Charter City, and**  
 20 **Municipal Corporation, the**  
 21 **HUNTINGTON BEACH CITY**  
**COUNCIL, MAYOR OF**  
 22 **HUNTINGTON BEACH, TONY**  
 23 **STRICKLAND, and MAYOR PRO**  
 24 **TEM OF HUNTINGTON BEACH,**  
**GRACEY VAN DER MARK,**

25 Plaintiffs,

26 v.

27 **GAVIN NEWSOM, in his official**  
 28 **capacity as Governor of the State of**

8:23-cv-00421-FWS-ADS

**[PROPOSED] ORDER GRANTING**  
**STATE DEFENDANTS' MOTION**  
**TO DISMISS AND REQUEST FOR**  
**JUDICIAL NOTICE**

Date: July 27, 2023  
 Time: 10:00 a.m.  
 Courtroom: 10D  
 Judge: The Honorable Fred W. Slaughter

Trial Date: None Set  
 Action Filed: 3/09/2023

**California, and individually;  
GUSTAVO VELASQUEZ in his  
official capacity as Director of the  
State of California Department of  
Housing and Community  
Development, and individually;  
STATE LEGISLATURE; STATE OF  
CALIFORNIA DEPARTMENT OF  
HOUSING AND COMMUNITY  
DEVELOPMENT; SOUTHERN  
CALIFORNIA ASSOCIATION OF  
GOVERNMENTS; and DOES 1-50,  
inclusive,**

Defendants.

1 Having considered the Motion to Dismiss, the Request for Judicial Notice, and  
 2 the exhibits attached thereto filed by Defendants Governor Gavin Newsom,  
 3 Director Gustavo Velasquez, and the California Department of Housing and  
 4 Community Developments (the “State Defendants”), and having considered all  
 5 other documents on file in this action, and for good cause shown, the Court hereby  
 6 GRANTS the State Defendant’s Request for Judicial Notice and GRANTS the  
 7 State Defendants’ Motion to Dismiss.

8 Plaintiff City of Huntington Beach does not have standing to sue the State  
 9 Defendants in federal court. *City of S. Lake Tahoe v. California Tahoe Reg’l Plan.*  
 10 *Agency*, 625 F.2d 231, 233–34 (9th Cir. 1980). Plaintiffs Huntington Beach City  
 11 Council, Mayor of Huntington Beach Tony Strickland, and Mayor Pro Tem of  
 12 Huntington Beach Gracey van der Mark do not assert interests separate from the  
 13 City itself, and thus also lack standing. *Id.* at 237. This Court lacks subject matter  
 14 jurisdiction over this case and, therefore, must dismiss all of Plaintiffs’ claims.  
 15 *Scott v. Pasadena Unified School Dist.*, 306 F.3d 646, 664 (9th Cir. 2002).

16 Separately, the Court finds that it should abstain from hearing Plaintiffs’  
 17 claims under the doctrine of *Younger v. Harris*. Specifically, factually-related state  
 18 court proceedings are (1) ongoing; (2) implicate important state interests; and (3)  
 19 provide adequate opportunity for Plaintiffs to raise their federal claims in this case  
 20 as defenses. *Younger v. Harris*, 401 U.S. 37 (1971); *Middlesex County Ethics*  
 21 *Committee v. Garden State Bar Ass’n*, 457 U.S. 423, 431 (1982). In addition,  
 22 *Younger* abstention is appropriate because Plaintiffs’ requested relief would have  
 23 the practical effect of enjoining ongoing state court proceedings. *ReadyLink*  
 24 *Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014).

25 The Court also finds that the Eleventh Amendment bars Plaintiffs from  
 26 bringing their claims based on alleged violations of state law against the State  
 27 Defendants in federal court. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S.  
 28 89, 99-100 (1984). In addition, Defendants Governor Gavin Newsom and the

1 California Department of Housing and Community Development are immune from  
 2 suit on *any* claim, state or federal, brought in this Court. *Ass'n des Eleveurs de*  
 3 *Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 943 (9th Cir. 2013); *City of*  
 4 *San Juan Capistrano v. California Pub. Utilities Comm'n*, 937 F.3d 1278, 1280 (9th  
 5 Cir. 2019).

6 The Court also finds that, even if Plaintiffs' claims were justiciable before it,  
 7 those claims would fail on the merits:

- 8 • Plaintiffs have not alleged a viable First Amendment claim because  
 9 California's housing laws do not burden or compel protected speech and  
 10 because legislators do not have a protectable First Amendment interest in  
 11 casting votes. *Nevada Comm'n on Ethics v. Carrigan*, 564 U.S. 117 (2011).
- 12 • Plaintiffs have not alleged a viable procedural due process claim under the  
 13 Fourteenth Amendment because they have not alleged a private liberty or  
 14 property interest and cannot allege that adequate procedural protections  
 15 were denied to them during the Regional Housing Needs Allocation  
 16 process. *Buckingham v. Sec'y of U.S. Dep't of Agr.*, 603 F.3d 1073, 1082–  
 17 83 (9th Cir. 2010); *City of Los Angeles v. David*, 538 U.S. 715, 716 (2003).
- 18 • Plaintiffs have not alleged a viable substantive due process claim under the  
 19 Fourteenth Amendment because control over zoning is not a protected  
 20 fundamental liberty interest and because Plaintiffs have not alleged any  
 21 facts that would support scrutiny of California's housing laws beyond  
 22 "rational basis." *Franceschi v. Yee*, 887 F.3d 927, 937 (9th Cir. 2018).
- 23 • Plaintiffs have not alleged a viable dormant Commerce Clause claim  
 24 because California's housing laws do not regulate, discriminate against, or  
 25 excessively burden interstate commerce. *Nat'l Ass'n of Optometrists &*  
 26 *Opticians v. Harris*, 682 F.3d 1144, 1148 (9th Cir. 2012).

27 Finally, the Court finds that, even if it possessed subject matter jurisdiction  
 28 over the state claims and those claims were not also barred by the Eleventh

1 Amendment, this Court would decline to exercise jurisdiction over the state claims  
2 because they predominate over the federal claims in this case and the exercise of  
3 jurisdiction over Plaintiffs' declaratory relief claims is not warranted. 28 U.S.C. §  
4 1367(c)(2); *Gov't Employees Ins. Co. v. Dizol*, 133 F.3d 1220, 1224 (9th Cir. 1998)  
5 (en banc).

6 For these reasons, the Court HEREBY ORDERS that the State Defendants'  
7 Motion to Dismiss is GRANTED in its entirety.

8  
9 Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Fred W. Slaughter  
United States District Judge